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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,735	03/10/2004	David William Walling	9198	3419

27752 7590 08/21/2007

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EXAMINER
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DODSON, SHELLEY A

ART UNIT	PAPER NUMBER
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1616

MAIL DATE	DELIVERY MODE
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08/21/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/797,735

Applicant(s)

WALLING ET AL.

Examiner

SHELLEY A. DODSON

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

SHELLEY A. DODSON  
PRIMARY EXAMINER

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 9/04 AND 1/05.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

Claims 1-14 are pending in this application filed March 10, 2004.

Applicant's claims are directed toward high efficacy antiperspirant stick containing low levels of non-volatile organics.

### ***Claim Rejections - 35 USC § 102***

1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Esser  
USP No. 6,221,345 B1.

Esser discloses cosmetic compositions suitable for antiperspirant or deodorant application to the human skin comprising an antiperspirant active in amounts from 1% to about 25%. Note column 3, lines 50-65 for the specific antiperspirant actives. Esser further discloses that said composition might be suitable for stick application or formulation. Note Example 8. In column 4, line 30-31, Esser discloses that one or more volatile carrier fluids may be present in the referenced composition. In column 4, lines 30-35, Esser further disclose that the structurant or thickening agent is present in the amounts claimed by applicant. Said agent is beeswax or paraffin wax, which is claimed by applicant. In column 4, Esser also discloses that the carrier fluid or non-volatile fluid is an emollient selected from the group consisting of mineral oils, fatty alcohols and water-soluble ethers and alcohols. In column 3, lines 10-30, Esser disclose that optional ingredients such as silicas and perfumes may also be present.

With respect to the hardness value, gram-force and adhesion values claimed by applicant, it is the examiner's position that these limitations and properties recited by applicant would be inherently possessed by the prior art compositions since the prior art compositions are identical to those claimed by applicant in the instant invention. No differences can be found between the compositions of the prior art and the instant invention; therefore the properties would inherently be the same.

***Information Disclosure Statement***

3.

The information disclosure statements (IDS) submitted on September 8, 2004 and January 28, 2005 were noted and the submissions are in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statements.

***Telephone Inquiries***

4.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHELLEY A. DODSON whose telephone number is (571) 272-0612. The examiner can normally be reached from 7:30 AM to 4:00 PM Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, can be reached at 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for

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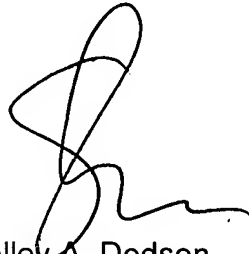
published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line and a small flourish.

Shelley A. Dodson  
Primary Patent Examiner  
Technology Center 1600